

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EDWARD SCHMALDINST
EMMA SCHMALDINST

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2753
Claim No. CU-2754

Decision No. CU-1513

SECOND AMENDED PROPOSED DECISION

By Proposed Decision of April 10, 1968, these claims were denied for failure of proof. Certain evidence having been submitted an Amended Proposed Decision issued on January 29, 1970, certifying a loss to EDWARD SCHMALDINST and EMMA SCHMALDINST in the amount of \$46.38 based on joint ownership of 100 shares of Havana Lithograph, which were purchased on January 18, 1962; and certifying a loss to EDWARD SCHMALDINST in the amount of \$46.37 based on 100 shares of that company, purchased on January 29, 1962.

Claimant EDWARD SCHMALDINST has now submitted evidence that 300 additional shares owned by him were purchased on February 12, 1962 for \$131.25. Accordingly, the Amended Proposed Decision is amended to include this additional item of loss. The total losses sustained by these claimants shall bear interest as follows:

	<u>FROM</u>		<u>ON</u>
EDWARD SCHMALDINST and EMMA SCHMALDINST	January 18, 1962		\$ 46.38
EDWARD SCHMALDINST	January 29, 1962	\$ 46.37	
	February 12, 1962	<u>131.25</u>	177.62

Accordingly, the certifications of loss, as restated below, will be entered and in all other respects the Amended Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS

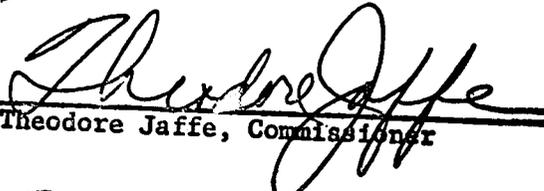
The Commission certifies that EDWARD SCHMALDINST and EMMA SCHMALDINST jointly suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-six Dollars and Thirty-eight Cents (\$46.38) with interest at 6% per annum from January 18, 1962 to the date of settlement; and

The Commission certifies that EDWARD SCHMALDINST suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Seventy-seven Dollars and Sixty-two Cents (\$177.62) with interest at 6% per annum from the aforesaid dates to the date of settlement.

Dated at Washington, D. C., and entered as the Second Amended Proposed Decision of the Commission

MAR 4 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimants establish retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Second Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EDWARD SCHMALDINST
EMMA SCHMALDINST

Claim No. CU -2753
Claim No. CU-2754
Decision No. CU-1513

Under the International Claims Settlement
Act of 1949, as amended

AMENDED PROPOSED DECISION

By Proposed Decision issued April 10, 1968, these claims were denied for failure of proof. Certain evidence having been submitted, the decision is hereby amended.

Certificates of common stock of the Havana Lithographing Company have been submitted, reflecting the following:

No. 26737 for 100 shares issued in the names of both claimants on February 7, 1962;

No. 26747 for 100 shares issued in the name of EDWARD SCHMALDINST on February 20, 1962 and Certificates Nos. 26750, 26751 and 26752 each for 100 shares, also issued to EDWARD SCHMALDINST on March 1, 1962.

In our decision entitled the Claim of Central West Company (Claim No. CU-3440 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per common stock share of \$2.51.

Claimants have also submitted purchase slips reflecting the purchase of 100 shares on January 18, 1962 for \$46.38 and 100 shares on January 29, 1962 for \$46.37. No evidence has been submitted as to the date of purchase and price paid for the remaining 300 shares.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

On the basis of evidence of record, the Commission finds that claimants jointly acquired 100 shares of Havana Lithographing on January 18, 1962 for \$46.38 and EDWARD SCHMALDINST acquired 100 shares on January 29, 1962 for a consideration of \$46.37.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on October 13, 1960. In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of Samuel J. Wikler, et al, Claim No. CU-2571, 1968 FGSC Ann. Rep. 47.)

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

The Commission finds that claimants, as assignees by purchase, acquired the claims for the loss sustained by the assignor of the claimed securities, but under the limitations provided in Section 507 of the Act (supra), are limited to the actual consideration paid for these shares.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644).

The Commission concludes, however, that the amount of loss sustained by claimants herein shall be increased by interest thereon at the rate of 6% per annum from the dates on which claimants acquired these claims to the date on which provisions are made for the settlement thereof, as follows:

	<u>FROM</u>	<u>ON</u>
EDWARD SCHMALDINST and EDMA SCHMALDINST	January 18, 1962	\$46.38
EDWARD SCHMALDINST	January 29, 1962	\$46.37

Inasmuch as claimants have not submitted evidence permitting a certification of loss on the remaining 300 shares, this item of claim remains denied.

Accordingly, the following Certifications of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

GU-2753
GU-2754

CERTIFICATIONS OF LOSS

The Commission certifies that EDWARD SCHMALDINST and EMMA SCHMALDINST jointly suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Six Dollars and Thirty-Eight Cents (\$46.38) with interest at 6% per annum from January 18, 1962 to the date of settlement; and

The Commission certifies that EDWARD SCHMALDINST suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Six Dollars and Thirty-Seven Cents (\$46.37) with interest at 6% per annum from January 29, 1962 to the date of settlement.

Dated at Washington, D. C., and entered as the Amended Proposed Decision of the Commission

9 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimants establish retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EDWARD SCHMALDINST
EMMA SCHMALDINST

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2753
CU -2754

Decision No. CU -
1513

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$1,000.00 were presented by EDWARD SCHMALDINST and EMMA SCHMALDINST, and are based upon the asserted ownership and loss of interests in securities of a corporation. Claimants have been nationals of the United States since their birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimants have based their claims upon the asserted ownership and loss of a total of 500 shares of stock in the Havana Lithographing Company of Cuba. However, other than information as to their nationality, claimants have submitted no documentary evidence in support of their claims. By Commission letter of July 7, 1967, claimants were advised as to the type of evidence proper for submission to establish these claims under the Act. However, no evidence in response to this correspondence has been received to date.

On January 16, 1968, claimants were invited to submit any evidence available to them within 45 days from that date, and they were informed that, absent such evidence, it might become necessary to determine the claims on the basis of the existing record. No evidence has since been submitted.

CU-2753
CU-2754

The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interest in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, these claims are hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-2573
CU-2574